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NO. 448

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

DAVID L. MATTHEWS and
MARY ANN MATTHEWS
Appellants,

VS

HAROLD W. HANDLEY,
EDWIN K. STEERS,
EDWIN W. BEAMAN and
WILLIAM J. LOCKS,
Appellees,

APPEAL FROM THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

JURISDICTIONAL STATEMENT

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Indiana Gross Income Tax Act of 1933; Acts of the Indiana General Assembly of 1933, Chap. 50, Sec. 13, p. 388; (Burns Indiana Statutes Annotated, Vol. 11, Sec. 64-2613, 1951 Replacement.)

Indiana State Const. Act. IV. Sec. 4 and Sec. 5.

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APPEAL FROM THE UNITED STATES DISTRICT COURT
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JURISDICTIONAL STATEMENT

Appellants submit herewith their jurisdictional statement as required by Rule Fifteen (15) of the Rules of the Supreme Court of the United States.

Opinion Below

The Court below delivered a written opinion of the case. A copy of said written opinion is reproduced here as Appendix A, and attached to this jurisdictional statement. The opinion was not reported.

Grounds of Jurisdiction

Pursuant to Supreme Court Rule Fifteen (15) the appellants file their statement particularly disclosing the basis on which they contend that the Supreme Court has jurisdiction to review on appeal the decree appealed from herein as follows:

Nature of Proceeding

A. This proceeding is in the nature of a Civil Rights Action by appellants to obtain a Declaratory Judgment and for an Injunction to enjoin these respondents from depriving appellants of their property under color of State Statute. Appellants contend that the Indiana Gross Income Tax Statute is unconstitutional because of its enactment by a session of the Indiana State Legislature composed in violation of the Indiana State Constitution which specifically mandates reapportionment of the Legislature periodically, to-wit: Every six (6) years.

The statutes pursuant to which this action is brought are as follows:

> "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." R.S. Sec. 1979, Title 42, United States Code, Sec. 1983.
>
> "The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and

for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the Constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cases is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty." R.S. Sec. 722; Title 42, United States Code, Sec. 1988.

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

* * *

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States." June 25, 1948, c. 646, 62 Stat. 932. Title 28, United States Code, Sec. 1343.

"An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of

three judges under section 2284 of this title." June 25, 1948, c. 646, 62 Stat. 968. Title 28; United States Code, Sec. 2281.

B. Review is sought of the District Court's Decree denying appellant's petition for a Declaratory Judgment and Injunction made and entered the 13th day of June, 1959. Notice of Appeal was filed on the 8th day of July, 1959, in the United States District Court for the Northern District of Indiana, South Bend Division.

C. The Statutory provisions believed to confer on this court jurisdiction of the appeal are as follows:

"Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges." June 25, 1948, c. 646, 62 Stat. 926. Title 28, United States Code, Sec. 1253. "All cases arising under the provisions of this act in the courts of the United States shall be reviewable by the Supreme Court of the United States, without regard to the sum in controversy, under the same provisions and regulations as are provided by laws for the review of other cases in said court." Mar. 1, 1875, c. 114. Sec. 5, 18 Stat. 337. Title 42, United States Code, Sec. 1984.

D. The cases believed to sustain the jurisdiction are as follows:

Smiley v Holm, 285 U. S. 335; Koenig v Flynn 285, U. S. 375; Carroll v Becker, 285 U. S. 380; Colegrove v Green, 328 U. S. 549; Wood v Broom, 287 U. S. 1; Cook v Fortson, 329 U. S. 675; MacDougall v Green, 335 U. S. 281; South v Peters, 339 U. S. 276; Dyer v Kazuhisa Abe, 138

F. SUPP. 220; 256 Fed (2d) 728; Chapman et al v King, 154 F. (2d) 460; Rice et al v Elmore, 165 F. (2d) 387; United States v Cruikshank, et al, 92 U. S. 542; Guinn & Beall v United States, 238 U. S. 347; ExParte Siebold, 100 U. S. 371; ExParte Yarbrough, 110 U. S. 751; Nixon v Herndon et al, 273 U. S. 536; Ashby v White 2 L. D. 938; Nixon v Condon et al, 286 U. S. 73; Giles v Harris, 189 U. S. 475; Lane v Wilson, 307 U. S. 268; United States v Classic, et al, 313 U. S. 299; Smith v Allright, 321 U. S. 649; Grovey v Townsend, 295 U. S. 45; Terry v Adams, 345 U. S. 461.

E. The statute of the State of Indiana, the validity of which is involved, is the Gross Income Tax Act of 1933, being Acts of the General Assembly of 1933, Chap. 50, Sec. 13, p. 388, as amended; (Burns Indiana Statutes Annotated, Vol. 11. Sec. 64-2613.) which provides in pertinent part as follows:

> "FAILURE TO PAY TAX — REMEDIES — RECEIVERS. — (a) If any tax, penalties, or interest, or any proportion thereof, imposed by this act (Sec. 64-2601—64-2361) and demanded by the department be not paid within thirty (30) days after the same is found to be due and within the ten (10) days after the demand provided for in section 12 (a) (Sec. 64-2612 (a)) of this act, the department shall issue a warrant under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the person owing said tax, found within his county, for the payment of the amount thereof, with damages to the amount of ten (10) per cent of the tax, in addition to the penalties imposed for failure to make a return, and in addition to the penalties imposed under section 11 (Sec. 64-2611) of this act, and interest, and costs of executing the warrant, and to return such warrant to the department and

pay to it the money collected by virtue thereof, by a time to be therein specified, not more than sixty (60) days from the date of the warrant . . . It shall be the duty of the taxpayer to make such verified inventory, schedule, or statement, upon the demand of the sheriff, and it shall be unlawful for any taxpayer to refuse so to do. Any person refusing so to make and provide such inventory, schedule, or statement, shall be guilty of a misdemeanor and on conviction thereof, shall be fined not less than twenty ($20.00) dollars nor more than fifty ($50.00) dollars, or imprisoned not exceeding six (6) months in the county jail, or punished by both such fine and imprisonment . . . Any person against whom a tax shall be assessed as herein provided shall be restrained and enjoined upon the order of the department, by proper proceedings instituted in the name of the State of Indiana, brought by the attorney-general and or any prosecuting attorney at the request of the department, from engaging and or continuing in business, until the taxes shall have been paid and until such person shall have complied with the provisions of this act; and such attorneys shall prosecute violations of criminal provisions of this act, upon the request of the department . . . If any tax assessed under this act, or any portion thereof, be not paid within one hundred and twenty (120) days after the same is found to be due, a receiver may be appointed by the Circuit or Superior court of the county in which such taxpayer resides, or the judge thereof in vacation, in a proceeding requesting such appointment, instituted against the said taxpayer in the name of the State of Indiana, brought by the Attorney-General at the request of the department; the court shall appoint a receiver when it finds that the taxpayer has not paid the tax, or amount due, imposed by this act, within one hundred and twenty (120) days after the same is found to be due; and that the tax or any portion thereof is unpaid and delinquent. Such cause for the appointment of a receiver

> shall be in addition to all other causes or grounds provided by law for the appointment of receivers, and shall be in addition to all other methods for the enforcement of this act . . . It is expressly provided that the foregoing remedies shall be cumulative and shall be in addition to all other existing remedies, and that no action taken by the department, the Attorney-General, or any other officer shall be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other remedy. (Acts 1933, ch. 50, Sec. 13 p. 388; 1937, ch. 117, Sec. 13, p. 604; 1945, ch. 143, Sec. 5, p. 311; 1951, ch. 279, Sec. 2, p. 830.)

Prior to the adoption of the Indiana Gross Income Tax of 1933, the Indiana General Assembly failed to comply with the following sections of the Indiana State Constitution, to-wit:

> "The General Assembly shall, at its second session after the adoption of this Constitution, and every sixth year thereafter, cause an enumeration to be made of all the male inhabitants over the age of twenty-one years. (As amended on March 14, 1881.) Article 4, Sec. 4, Indiana State Constitution (Burns Indiana Statutes Annotated, Vol. 1, p. 87).
>
> "The number of Senators and Representatives shall at the session next following each period of making such enumeration, be fixed by law, and apportioned among the several counties, according to the number of male inhabitants, above twenty-one years of age, in each: Provided, that the first and second elections of Members of the General Assembly, under this Constitution, shall be according to the apportionment last made by the General Assembly, before the adoption of this Constitution. (As amended on March 14, 1881.) Article 4 Sec. 5, Indiana State Constitution, (Burns Indiana Statutes Annotated, Vol. 1 p. 87).

Questions Presented

The following question is presented by this appeal:

Whether or not a three (3) Judge Federal Court has the jurisdiction to hear and determine the rights of these plaintiffs to redress in the Federal Court under the Federal Civil Rights Act under the following set of facts, to-wit:

1. Petitioners pray the court for a declaratory judgment determining rights of the parties under the Indiana Gross Income Tax Act in view of the proposition that the tax was enacted by a legislature in the State of Indiana that was convened without the mandatory reapportionment required by the Indiana State Constitution.
2. Petitioners ask the court for an injunction to prevent the collection of the Gross Income Tax on the grounds that the said tax is unconstitutional as having been passed by a Legislature which was illegally constituted inasmuch as the Legislature had not been reapportioned as required by the mandate of the Indiana State Constitution.
3. Plaintiffs have been denied the right to equitable representation in the Indiana Legislature by failure of the Legislature to reapportion itself as required by the Indiana State Constitution.
4. Plaintiffs' rights to vote have been impaired.

Statement of the Case

The plaintiffs herein, as citizens of the United States and of the State of Indiana, have the right conferred by the Constitution of the State of Indiana, to have the entire membership of the Indiana State Legislature reapportioned every

six (6) years pursuant to Article 4, Section 4, of the Indiana State Constitution.

This has not been done since 1921, and due to population changes and shifts since 1921 and the failure of the Legislature to so reapportion itself, the plaintiffs' votes are not as effective as the votes of the voters residing in other Senatorial and Representative Districts in the State of Indiana.

That since said failure to reapportion there has been enacted by the Indiana General Assembly the Indiana Gross Income Tax Act of 1933, as amended, supra.

That the Indiana Gross Income Tax Division has demanded of the plaintiffs' the payment of an amount of tax due and owing for the year 1955, arising out of the sale by plaintiffs of a residence in the City of South Bend, Indiana, and are threatening and attempting to collect said tax pursuant to Chap. 50, Sec. 13 of the Indiana Gross Income Tax Act of 1933, as amended, supra.

Plaintiffs' have refused to pay said tax, demanded by respondents herein, because their constitutional rights have been violated.

Questions Presented are Substantial

One of the most pressing problems facing the State of Indiana is the problem of reapportioning the number of Senators and Representatives among the several counties. The Constitution requires an enumeration to be made of all the male inhabitants over the age of Twenty-one (21) years. (Indiana State Constitution, Article 4, Section 4). This enumeration was to be made at the second session of the General Assembly after the adoption of the Constitution and was to be made every six (6) years thereafter. For Thirty-seven (37) years the Legislature has refused or failed

to cause an enumeration to be made. The lack of enumeration has resulted in a failure of the General Assembly to reapportion the number of Senators and Representatives among the several Counties. Failure to reapportion has resulted in a very grave crisis in our State for at least two reasons:

1. The Federal Constitution, Article 4, Section 4, provides that the United States shall guarantee to every state in the United States a Republican form of government.

2. The Supreme Court of the United States has stated that the distinguishing feature of the Republican form of Government is the right of the people to choose their own officers for governmental administration and to pass their own laws by virtue of the legislative power of representative bodies.

The failure to provide for a reapportionment of Legislators in Indiana has the effect of denying many of the people in Indiana the right to choose their own officers for governmental administration and the right to pass their own laws. This is true because there have been substantial shifts of population and increases in population in the various Counties since the last reapportionment in the State of Indiana.

The Indiana State Constitution, Article 2, Section 1, provides that all elections shall be free and equal. The election of members of the General Assembly in Indiana are not equal elections for the reason of the General Assembly failing to maintain a proper apportionment of Senators and Representatives to the various Counties.

It would appear that every General Assembly of the State of Indiana since 1927 has been unconstitutionally constituted under both the Federal and the State Constitutions. The Gross Income Tax Act of 1933 is therefore an unconstitutional act.

In addition to the questionable legality of the organization of the Indiana General Assembly since 1927, the greater problem of providing a Democratic Government to the citizens of Indiana, and the maintenance of the confidence of the people in their government cannot be overlooked. It is a disgrace for Senators and Representatives to take an oath to suport the Constitution of the State of Indiana and then to flagrantly violate the same by failure to follow the provisions of the Indiana State Constitution pertaining to reapportionment.

The failure of the Legislature to obey the Constitution of the State of Indiana has resulted in plaintiffs' being deprived of the equal protection of the laws of the State of Indiana.

The deliberate inaction of the legislature has caused an unequal and arbitrary effect throughout the State. A voter in one County has a decided electoral preference over a voter in another County, although all are entitled to equal treatment under the law. This result by non-action has been a purposeful and systematic plan to discriminate against a geographic class of citizens. It has been achieved as though a positive statute had been passed to accomplish the same purpose. Biased inaction has had the same result as biased action. It is a denial of the equal protection of the law.

The law in question before us also denies the due process of law to the plaintiffs. Although equal protection of the law and due process are not always interchangeable, they can overlap. As stated before, the failure of the Legislature to reapportion itself has had the same effect as if it had pointedly favored one class of persons over another regional group in violation of the Constitution. The result has been arbitrary discrimination effecting persons entitled to similar treatment. It is a denial of due process.

Respondents herein are endeavoring to deprive plaintiffs

herein of their property, to-wit: their tax money, without due process of law and without the equal protection of the laws, under color of State Statute in violation of the Federal Civil Rights Act.

Abuse of Discretion

The Court abused its discretion in denying plaintiffs' petition for a declaratory judgment and injunction for the following reasons:

1. Plaintiffs' petition raised constitutional questions. The State of Indiana, in putting into effect the Gross Income Tax of 1933, violated the plaintiffs' rights to due process and equal protection of the laws. Judgment of dismissal was not warranted by the Three (3) Judge District Court in the showing of such constitutional violations by the State of Indiana. Plaintiffs contend that the District Court committed serious error in thus dealing with the case.

The plaintiffs contend that the court abused its discretion in dismissing their petition for declaratory judgment and injunction. Plaintiffs' petition raised serious questions under the Federal Constitution and the State Constitution and disclosed that enforcement of the Indiana Gross Income Tax of 1933 would inflict irreparable damage upon the plaintiffs.

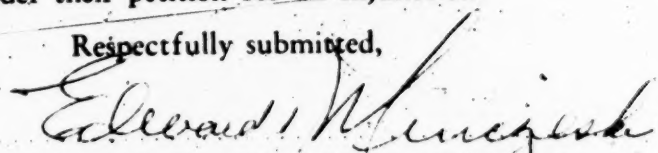
Conclusion

WHEREFORE, it is respectfully submitted that the District Court had jurisdiction of plaintiffs' petition for declaratory judgment and injunction and that it was error to sustain defendants' motion to dismiss for want of jurisdiction.

Petitioners', having alleged deprivation of their Federal Rights as citizens of the United States and of the State of Indiana under color of State Statute, are entitled to a hear-

ing on the merits to have their rights determined under their petition for Declaratory Judgment, and to have their rights protected under their petition for an Injunction.

Respectfully submitted,



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APPENDIX A.

In The United States District Court

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

DAVID L. MATTHEWS and
MARY ANN MATTHEWS
Plaintiffs,

VS

HAROLD W. HANDLEY,
Governor of the State of
Indiana, et al.,
Defendants,

CIVIL NO: 2540
Before The Honorable
WIN G. KNOCH,
Circuit Judge and
The Honorable
LUTHER M. SWYGERT
and The Honorable
ROBERT A. GRANT,
District Judges

GRANT, DISTRICT JUDGE:

Plaintiffs herein have filed a petition praying for a declaratory judgment and for an injunction.

The petition alleges that this Court has jurisdiction under the Civil Rights Act and alleges a violation of Federal and State Constitutional rights. Plaintiffs further allege that defendants as the Governor, other officials of the Executive Department of the State of Indiana, and the Sheriff of St. Joseph County, Indiana, are threatening and attempting to collect from plaintiffs a Gross Income Tax for the year 1955. Plaintiffs further alleged that as citizens of the State of Indiana they have the right to have the entire membership of the Indiana Legislature reapportioned,

as provided in the State Constitution.

> "The General Assembly shall, at its second session after the adoption of this Constitution, and every sixth year thereafter, cause an enumeration to be made of all male inhabitants over the age of 21 years."
>
> Article 4, Section 4, *Indiana State Constitution.*

The petition alleges that the last reapportionment of the senatorial and representative districts was in 1921, and that in the absence of reapportionment since the year 1927 the subsequent acts of the Legislature are void and any action on the part of the defendants to collect this tax will be in deprivation of plaintiffs' Constitutional rights. Plaintiffs pray that the Indiana Gross Income Tax Law of 1933, as amended, be declared unconstitutional and that defendants be restrained from collecting, or attempting to collect the tax from plaintiffs.

Defendants herein have filed a motion to dismiss. Briefs have been filed and oral argument has been heard by this Court.

Historically, since the dawn of Courts of Equity in our Anglo-American system of jurisprudence, it has been held that Courts of Equity will not act in such a circumstance as here when adequate legal remedies exist. Plaintiffs have an adequate legal remedy available. Plaintiffs are asking this Court to concern itself with a purely State political question. The plaintiffs have the power of the ballot to correct any unrealistic apportionment of the State Legislature which might exist.

It is admitted that the Legislature has failed to reapportion the legislative districts as provided in the Indiana Constitution. No attempt is made here to defend this flagrant disregard of the plain, constitutional provisions. However, the Federal Government is a body politic of strictly

limited powers. The powers which were not specifically delegated to the Federal Government were reserved to the sovereign States of the Union.

We are here concerned with two, distinct, sovereign bodies: the State of Indiana and the United States of America. As stated above, we are here presented with a State political question in which the plaintiffs seek to invoke the Equity jurisdiction of this Federal Court. This Court has no jurisdiction to determine this question as the plaintiffs have adequate remedies at law available to them, and, what is more important, the Federal sovereignty must not and shall not invade this bulwark of State sovereignty.

Perry v. Folsom, 144 *Fed. Supp.* 874.

Defendants' Motion to Dismiss is hereby granted.

ENTER: JUNE 13, 1959

WIN G. KNOCH, JUDGE

LUTHER M. SWYGERT, JUDGE

ROBERT A. GRANT, JUDGE